

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SAMUEL DALEMBERT
Creditor

v.

In re:
THEODORE D. PENDERGRASS, II,
Debtor

CHAPTER 7

BANKRUPTCY NO. 06-13988

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

Creditor Samuel Dalembert, by and through his attorney, Nino V. Tinari, Esquire, brings a Complaint to Determine Dischargeability of Debt against Debtor Theodore D. Pendergrass, II, and avers as follows:

1. Creditor Samuel Dalembert is a citizen and resident of the State of Pennsylvania, residing at 14 Cynwyd Rd., Bal Cynwyd, PA, 19004.
2. Debtor Theodore D. Pendergrass, II, is a citizen and resident of the State of Pennsylvania, address unknown, and accepts service by his bankruptcy counsel, David A. Scholl, Esquire, The Regional Bankruptcy Center of Southeastern PA, #6 St. Albans Ave., Newtown Square, PA 19073.
3. The Creditor invokes the jurisdiction of the United States Bankruptcy Court, Eastern District of Pennsylvania, to determine the dischargeability of debt owed by the Debtor to Creditor, pursuant to the Debtor's bankruptcy filing, no: 06-13988
4. The Debtor began employment with the Creditor on or about January 2000.
5. The Debtor was authorized with power of attorney to act on the Creditor's behalf on financial matters.

6. The Debtor owed fiduciary duties to the Creditor, and was required to act honestly and in good faith with regard to the best interests of the Plaintiff and to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

7. In 2001, the Debtor commenced a pattern of withdrawing monies from the Creditor's accounts, and accruing charges against the Creditor's accounts, without the authorization of the Creditor.

8. The unauthorized monies and charges were taken and used by the Debtor for his own benefit, at the expense of the Creditor.

9. The unauthorized activity included:

(a) forging bank notes and depositing the proceeds of the forged notes into the Debtor's accounts or accounts associated with the Debtor.

(b) misappropriating over \$350,000 of the Creditor's funds, assets and credit.

10. The misappropriated funds have not been repaid as of the date of this filing.

11. In October, 2006, the Creditor filed a civil complaint in the Court of Common Pleas of Philadelphia County against the Debtor, claiming fraud and breach of fiduciary duty and demanding in excess of \$350,000 in damages.

12. The Debtor subsequently filed for Chapter 13 Bankruptcy protection, which was ultimately converted by Debtor's motion to Chapter 7 Bankruptcy protection.

13. Pursuant to the "Automatic Stay" provisions of U.S. Bankruptcy Court, the civil action was stayed during the discovery period.


14. By filing for Bankruptcy protection, the Debtor is attempting to discharge liabilities to the Creditor that were incurred as a result of fraud and breach of fiduciary duty.

15. The unlawful nature of the Debtor's liabilities are not dischargeable in a Chapter 7 Bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(2).

16. By the instant Motion to Determine Dischargeability of Debt, the Creditor moves this Court to determine that the Debtor's liabilities to the Creditor are not dischargeable in the instant bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(2).

WHEREFORE, the Creditor respectfully requests this Court to determine that the Debtor's liabilities in excess of \$350,000 to the Creditor are not dischargeable.

Date: 7/10/07



Nino V. Tinari, Esquire
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VERIFICATION

I verify under penalty of perjury that the foregoing is true and correct.

Date: 7/10/07



Nino V. Tinari, Esquire
Attorney for Creditor
123 South Broad Street
Suite 1970
Philadelphia, Pa 19107

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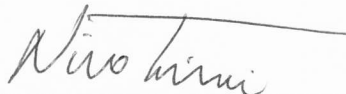
CERTIFICATION OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the foregoing this day, by first class, pre-paid mail:

David A Scholl
Attorney for Debtor
The Regional Bankruptcy Center
#6 St. Albans Avenue
Newtown Square, Pa 19073

Trustee William C. Miller
111 S. Independence Mall
Suite 583
Philadelphia, Pa 19106

Date: 7/10/07



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